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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,863	04/16/2004	Donald W. Schmanski	21689.NP	8189
20551	7590	03/26/2007	EXAMINER	
THORPE NORTH & WESTERN, LLP. 8180 SOUTH 700 EAST, SUITE 200 SANDY, UT 84070			PELHAM, JOSEPH MOORE	
		ART UNIT	PAPER NUMBER	
		3742		

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/825,863	SCHMANSKI, DONALD W.	
Examiner	Art Unit		
Joseph M. Pelham	3742		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on ____.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-46 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 19-42 is/are allowed.

6) Claim(s) 1-18 and 43-46 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 16 August 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. ____ .
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/9/04, 6/24/05.
5) Notice of Informal Patent Application
6) Other: ____ .

Claim Rejections - 35 USC § 112

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

At line 10 of the claim, "between opposing corners" is unclear because the geometry of the spike is not sufficiently defined to establish the existence of corners.

At line 14, "said condiment receiving channel" lacks antecedent basis.

Claim Rejections - 35 USC § 102

Claims 1-3, 6-14, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. 1902564.

Referring to Figs. 1-3 and lines 45-66, US'564 discloses a heated bread toasting spike 25 formed of planar surfaces so as to create condiment channels in a bread item, "comprising" a uniform cross section (the upper portion) and also "comprising" a non-uniform cross section (the bottom segment).

The Examiner notes initially that although US'564 suggests the use of spike 25 for hamburger or chili, and the instant claims contemplate, though do not recite a cylindrically shaped sausage, both are intended uses and therefore not germane to the patentability of the device. The buns formed with the device of US'564 are quite capable of the contemplated use.

Claim Rejections - 35 USC § 103

Claims 4, 5, 15-17, and 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'564 in view of US Pat. 1589850.

The claims differ from US'564 only in calling for alternative polygonal cross sections for the cavity, curved segments, a circular cross section large enough to accommodate condiments, and inserting the bread item into "an impaling system prior to impaling it. However, US'850 discloses, at Figs. 5 & 6 and lines 65-79, an alternative polygonal cross section for a sausage cavity in a bun with channels to accommodate condiments. More particularly, US'850 teaches that the cavity shape produced by spike 25 of US'564 is appropriate for condiments. It would have been obvious to utilize alternative cross sections for the cavity of US'564, of diverse geometrical shapes, since US'850 shows that an 8-pointed star shape adds aesthetic to the practical appeal. Curved segments are certainly obvious geometrical variations on regular polygons, and a circular cross section large enough to allow condiments, in the case of spike 11 of US'564 for instance, is rendered obvious as well by US'850.

Allowable Subject Matter

Claims 19-42 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M. Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

3/17/07



JOSEPH PELHAM
PATENT EXAMINER